United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-1420

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1420

UNITED STATES OF AMERICA,

Appellee,

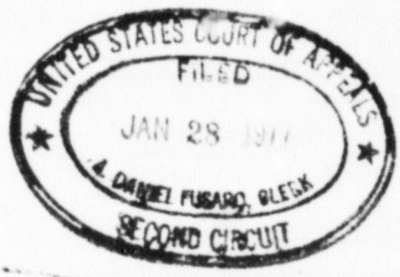
—against—

KENNETH RAYMOND CHIN, and ELIZABETH JANE YOUNG, now known as ELIZABETH JANE YOUNG CHIN,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S SUPPLEMENTAL APPENDIX



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAGINATION AS IN ORIGINAL COPY

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ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

January 28, 1976

Honorable Jacob Mishler
Chief United States District Judge
Eastern District of New York
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Chin and Young
No. 75 CR 851

Dear Chief Judge Mishler:

We enclose herewith a copy of an affidavit of Neal Findley, responding to the factual allegations going to the good faith of the Secret Service in obtaining the warrant. We also enclose a letter from A. E. Whitaker, the Special Agent in charge of the New York office of the Secret Service.

On the legal issue, whether probable cause was shown to justify the issuance of the search warrant, our position is that when a person expends $270.00 for a semi-automatic firearm, it is certainly probable that she will still be in possession of that weapon only sixty-six days later and that, if it is in her possession, it will be where she keeps most of her other possessions, in her home. Particularly apposite here is United States v. Steeves, 525 F.2d 33 (C.A. 8, 1975). There a warrant was issued to search the defendant's premises for a weapon, and other evidence of the defendant's participation in a bank robbery that had transpired approximately 87 days prior to issuance of the warrant. Moreover, the warrant, a copy of which is enclosed herewith, did not contain any direct evidence that the items to be searched for were in the defendant's residence. In upholding the validity of the warrant, the Court of Appeals observed (525 F.2d at 38):

> "[D]elay in seeking and obtaining a search warrant may invalidate it. While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the criminal activity involved, and the kind of property for which authority to search is sought.

> Obviously, a highly incriminating or consumable item of personal property is less likely to remain in one place as long as an item of property which is not consumable or which is innocuous in itself or not particularly incriminating."

Applying this test to the facts in the case before it, the Court of Appeals continued (525 F.2d at 38):

> "Let it be assumed for purposes of discussion that the defendant in fact robbed the bank on June 22 and that he immediately repaired to his home with his loot and its container, his weapon and his disguise. We think that it may be conceded to the defendant that as late as September 17 there was little reason to believe that any of the bank's money or the money bag would still be in the home. But, the same concession cannot be made with respect to the revolver, the ski mask, and the clothing. The ski mask and the clothes were not incriminating in themselves, and apart from his prior felony record possession of the pistol was not unlawful in itself or particularly incriminating. Moreover, people who own pistols generally keep them at home or on their persons." [Emphasis supplied].

The holding in the Steeves case is even more apposite here, because there is no evidence showing that the weapon here at issue was used in the commission of a crime, a fact which would increase the likelihood that she would have disposed of the weapon. Moreover, many other cases have likewise upheld warrants for searches of premises, particularly houses, even though there was no direct evidence that the materials sought were actually seen on the premises. So, for example, in United States v. Lucarz, 430 F.2d 1051 (C.A. 9, 1970), the defendant, a postal employee, signed a receipt for a mail pouch containing the proceeds of the previous day's sale of stamps. Later that day he reported that the pouch had been cut and the contents missing. The $20,000 in proceeds was recovered as a result of a search of the defendant's home under a warrant issued five days later. The affidavit in support of the warrant showed that the defendant was not seen taking the mail to his house, nor did anyone see the stolen

goods there. The court of appeals, in upholding the warrant, stated (430 F.2d at 1055):

> "The situation here does not differ markedly from other cases wherein this court and others, albeit usually without discussion, have upheld searches although the nexus between the items to be seized and the place to be searched rested not on direct observation, as in the normal search-and-seizure case, but on the type of crime, the nature of the missing items, the extent of the suspect's opportunity for concealment, and normal inferences as to where a criminal would be likely to hide stolen property."

See also, United States v. Rahn, 511 F.2d 290, 293 (C.A. 10, 1975) where the court of appeals, quoting approvingly from the language of the district court, observed (511 F.2d at 294):

> " ... As Chief Judge Arraj stated, in denying the original motion to suppress: 'It is reasonable to assume that his house was where he kept things and it is pretty normal I believe for individuals to keep weapons in their homes, particularly hunting weapons and weapons which may be kept for the safety of the family.' Here an ATF agent was believed to possess the weapons; certainly he would not have had the weapons at his office. Admittedly there are other places where the guns might have been stored; yet, we believe these facts and circumstances gave the magistrate probable cause to believe the weapons would be found as a result of the search of appellant's present residence.
>
> In making these decisions concerning the affidavit's sufficiency, we have given deference to the issuing magistrate's determination and have remembered that even doubtful cases are to be resolved largely by the preference to be given warrants."

Accord: United States v. Archer, 355 F. Supp. 981, 991 (S.D.N.Y. 1972); cf. Bastida v. Henderson, 487 F.2d 860 (C.A. 5, 1973).

Moreover, contrary to defendants' claim, the fact that the weapon at issue here was purchased in California hardly lessens the inference that it would be found in the defendant's apartment in New York. As Mrs. Piel observes, the weapon was "readily movable" (Memo. p. 4), and, at the time it was purchased, the defendant Young already had a New York residence. The only reasonable inference is that after expending $270.00 for the weapon, the defendant Young would not abandon it in California, but would take it to her home in New York (as she in fact did).

The defendant Chin, relying upon United States v. Mendoza, 487 F.2d 309 (C.A. 5, 1973), also claims that the affidavit failed to establish that the defendant Young had knowingly made a false statement with regard to her address when she purchased the weapon at issue. But the issue in that case was whether the evidence was sufficient to establish beyond a reasonable doubt that the defendant had falsely stated his address. The evidence showed that the defendant in fact "maintained no permanent living accommodations" (487 F.2d 309), and that the address on the driver's license which was exhibited to the vendor was a mailing address used by the defendant and through which he could be contacted by mail or telephone (487 F.2d 309). Moreover, the vendor had no recollection of the sale. She did not recall specifically asking the defendant for his address, nor did she recall whether the license was given to her as proof of residence. Under these circumstances, it was held that the evidence was insufficient to sustain a conviction. The issue in our case is not whether, on the basis of a complete record, the evidence would sustain the defendant's guilty beyond a reasonable doubt. The issue is simply whether there was probable cause to believe that she knowingly gave a false address. United States v. Mendoza, supra, is thus inapposite here.

The defendants also challenge the bona fides of the Secret Service in obtaining the warrant; they allege that Agent Findley recklessly asserted that a serious danger was posed to the Emperor of Japan and that the supplemental affidavit contained a misstatement of fact. Although we submit an affidavit in response to this claim, we believe that the claim is without substance in any event. Agent Findley's opinion regarding the nature of the threat to the safety of the Emperor of Japan was just that, and since he advised the magistrate of the ground for that belief, the latter was able to evaluate what weight it should be given. Moreover, while the supplemental affidavit did erroneously state that the defendant Young resided with Ms. Miyamoto, when in fact they

resided in adjoining houses, that discrepancy was not significant, nor was it, or the rest of the supplemental affidavit, material to the issue whether there was probable cause to believe that the weapon described in the warrant would be found. On the contrary, its purpose was to show that even if the original affidavit failed to establish probable cause for such a belief, the warrant should nevertheless issue because of the threat to a head of state who was a guest of the United States. See People v. Sirhan, 497 P. 2d 1121, 1140 (Sup. Ct. Cal. en banc, 1972), certiorari denied, 410 U.S. 947.

Thus, the supplemental affidavit becomes relevant only if it is determined that the original affidavit was insufficient to authorize the search, and it is necessary to determine whether the supplemental affidavit provided a sufficient basis to authorize the search in the absence of probable cause. Accordingly, although we have no objection to a hearing regarding the issue whether the in camera affidavit contained untruthful statements which were either deliberately or recklessly made [see, United States v. Carmichael, 489 F.2d 983, 988-89 (C.A. 7, 1973)], since there was "ample ground for issuing the search warrant without consideration of the [challenged] statement(s)", such a hearing may not be necessary. Cf. United States v. Pond, 523 F.2d 210, 214 (C.A. 2, 1975). (Needless to say, a finding that the original affidavit was by itself sufficient, would avoid any issue regarding the propriety of considering the still sealed portions of the supplemental affidavit; contrary to the defendants' claim, we did not concede that the sealed portion of the supplemental affidavit not be considered.)

Finally, for the reasons set out in our brief in United States v. Karathanos, which we have provided the parties and the district court, it is submitted that, even if the original affidavit was insufficient, the exclusionary rule should not be applied here.

Respectfully yours,

DAVID G. TRAGER
United States Attorney

By: EDWARD R. KORMAN
Chief Assistant
United States Attorney

Encs.

cc: Ellis Stringfellow Patton & Leibovitz, Esqs.
Eleanor Jackson Piel, Esq.

FILE No J-00-2-7194

A ° 6

DEPARTMENT OF THE TREASURY

UNITED STATES SECRET SERVICE

Mail address:

U. S. Customhouse - Room 623
6 World Trade Center
New York, N. Y., 10048

New York, New York

Telephone:

212-466-4400

January 13, 1976

Honorable David G. Traeger
United States Attorney
Eastern District of New York
U. S. Court House
225 Cadman Plaza E.
Brooklyn, N. Y. 11201

Attention: Assistant U. S. Attorney Gavin Scotti

Sir:

Reference is made to the telephone conversation between Assistance U. S. Attorney Scotti and ATSAIC Hofmann of this office on January 13, 1976 regarding allegations made by defense counsel William Liebowitz in court during a motion to suppress evidence obtained from the execution of a search warrant at 925 Union Street, Apartment 4B, Brooklyn, N. Y. on October 4, 1975.

In these allegations Mr. Liebowitz advised the court that information obtained by this Service from the FBI, and which appeared in the affidavit for a search warrant, was false on its face in that the Secret Service learned that it was false shortly after executing the search warrant. Mr. Liebowitz asserted that he had obtained this information from a New York Times reporter.

On Monday, October 6, 1975, during the preliminary appearance of defendants Chin and Young before the U. S. Magistrate in the Eastern District of New York, Mr. Max Seigel of the New York Times attempted to interview ATSAIC Hofmann and Special Agent Neil Findley of this office in the hallway outside the U. S. Magistrate's Court Room. Numerous questions were asked and were referred to the official release prepared by this office and distributed to the press on October 4, 1975. A copy of this release is attached.

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J-CO-2-71294

January 13, 1976

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ATSAIC Hofmann did, however, advise Mr. Seigel that the offense for which the two defendants were charged, fell under the investigative authority of the Alcohol, Tobacco and Firearms Bureau of the Treasury Department and that the U. S. Secret Service would no longer be involved in the prosecution of this case.

One of the reporters present asked if the charges against the defendants were going to include conspiracy to assassinate Emperor Hirohito of Japan, and ATSAIC Hofmann advised that such charges were not included against the defendants at this time.

Attached for your information is a copy of the article written by Mr. Seigel and printed by the New York Times on October 7, 1975. At no time did any agent of this Service make any statement to anyone that information provided by the FBI to the Secret Service was at any time determined to be false information.

Please advise if this Service could be of any further assistance.

Very truly yours,

A. E. Whitaker
Special Agent in Charge

Encl

GWH/ah

A 8

RELEASE

1:30 pm, 10/4/75 New York

Special Agent in Charge A. E. Whitaker, U. S. Secret Service, New York Field Office, announced today that at 9:30 am, this date, agents of the U. S. Secret Service executed a search warrant issued by U. S. Magistrate Cataggio, Brooklyn, New York on 10/3/75 on the premises known as Apt. 4B, 925 Union Street, Brooklyn, New York. The warrant directed that a search be made for illegal firearms.

Two individuals have been taken into custody. They are: Kenneth Raymond Chin, Chinese/American, born in Maryland on April 24, 1948; and Elizabeth Jane Young, Chinese/American, born in California on October 10, 1944. They will be charged at arraignment on Monday at the U. S. District Court, Eastern District of New York, Brooklyn, New York with violations of the Federal Firearms Act.

Cooperating with the Secret Service during the investigation of this case, was the FBI, New York, which provided initial leads regarding the possible danger of Chin and Young to protectees of the U. S. Secret Service.

Seized during the search at the apartment in Brooklyn were a number of rifles, including two semi-automatic AR-180 rifles similar to the Army's M-16 and one Browning automatic pistol.

Assistant U. S. Attorney Raymond J. Dearie, Eastern District of New York is handling the prosecution of this case and assisted in the investigation.

NY TIMES, 10/7/75.

By MAX H. SEIGEL

A Chinese-Americ couple whose apartment ..legedly yielded an arsenal of weapons when it was raided by Secret Service agents Saturday morning, were ordered held in $25,000 bail each at their arraignment in Federal Court in Brooklyn yesterday.

Kenneth Raymond Chin, a 27-year-old decorated veteran of the Vietnam war, and Elizabeth Jane Young, 31, a licensed plumber, were charged with conspiring to acquire a semiautomatic rifle by using false identification and to transport it from California to New York. A hearing was set for Oct. 16.

At the arraignment before Magistrate Vincent A. Catoggio, no mention was made of any link between the couple and any possible attempts on the life of Emperor Hirohito of Japan—a possibility that had been raised earlier by the Federal Bureau of Investigation.

After the arraignment, Special Agent Neal Findley of the Secret Secret said the matter had been turned over to the Alcohol, Tobacco and Firearms division of the Treasury Department. "The Secret Service is no longer involved," he said.

On Saturday Charles A. Whitaker, Secret Service agent in charge of the New York field office, said his office had searched the couple's apartment, at 925 Union Street, Brooklyn, because it had received leads from the F.B.I. regarding a possible threat by the two suspects to persons under the protection of the Secret Service. Among those so protected are visiting heads of state, such as Emperor Hirohito.

In arguing for lower bail for his clients, the lawyer for the couple, William Leibovitz of Manhattan, emphasized that Mr. Chin held an honorable discharge from the Navy, that he had served in combat aboard the carrier Hancock for 14 months, and that he had been decorated four times.

Mr. Chin sat expressionless in the courtroom as his lawyer explained that the weapons found in the apartment he shared with Miss Young were those of a hunter and gun collector. Both suspects, the lawyer said, have hunting licenses. In addition, he said, Mr. Chin belongs to the West Side Rifle and Pistol Club and to another club upstate.

"Four of the weapons found in the apartment," Mr. Leibovitz s... "had been registered with ... state, and Mr. Chin was arranging to have the others registered." If his clients are guilty of anything, Mr. Leibovitz said, it is the failure to have some of their guns properly registered.

He noted that Mr. Chin was employed as an apprentice glazier under a union-sponsored program with the Barrey Schogel Glass Company in Brooklyn. An employe said everyone there had a high regard for Mr. Chin.

Both suspects were said by Mr. Leibovitz to have been active in the Chinatown community—Mr. Chin, in helping to develop a health-services program and Miss Young as a director of a Reach program under the Chinatown Planning Council.

Meanwhile, an affidavit filed yesterday said the Secret Service had found in the apartment five rifles, two with telescopic sights, one shotgun, two revolvers and one automatic pistol. One of the rifles, an Armalite AR-7 Explorer, was made to fit into a series of grooves in the stock. Two, which were semiautomatic AR-180's were folding rifles.

NEWS DAILIES

25G Holds 2 Seized

SEARCH WARRANT IN UNITED STATES v. STEVENS, 525 2d 33 (C.A. 8, 1975)

United States District Court

FOR THE

Docket No.

Case No.

UNITED STATES OF AMERICA

vs.

GENERALLY

AFFIDAVIT FOR SEARCH WARRANT

BEFORE: J. [illegible] Cahill
Name of Judge or Federal Magistrate

526 U. S. Courthouse, Minneapolis, Minn.
Address of Judge or Federal Magistrate

The undersigned being duly sworn deposes and says:

That he has reason to believe that ~~(on the person or)~~ (on the premises known as) 5050 Fourth Street Northeast

in the City of Fridley, County of Anoka

in the State and District of Minnesota

there is now being concealed certain property, namely, black trousers, black waist-length jacket, (here describe property)

black ski mask, .357 magnum handgun and silencer, money bag from Summit State Bank,

proceeds of bank robbery,

which are instrumentalities and evidence of robbery of Summit State Bank on June 27, 1974.
(here give alleged grounds for search and seizure)

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

SEE ATTACHED SHEET

ROBERT [illegible]
Special Agent, Federal Bureau of Investigation

Sworn to before me, and subscribed in my presence, September , 1974

J. EARL COLD
Judge or Federal Magistrate

Marlene Mansfield, Cashier, [illegible], advises Special Agents of the Federal Bureau of Investigation that the Summit State Bank was insured by Federal Deposit Insurance Corporation on June 22, 1974.

John Price, Jr. advises he is a Loan Officer of Summit State Bank and at 11:30 a.m. on June 22, 1974 he was walking in a hallway adjacent to the bank with Dean Thom, a customer. Price further advises that he and Thom were accosted by a white male wearing a black ski mask, black trousers with narrow white stripes, gloves and a black waist-length jacket with a zipper front. Price further advises that subject menaced him and Thom with a blue magnum-type handgun with a silencer. Subject directed the two men into the bank; whereupon subject ordered everyone to lie down and he proceeded to rob the bank, ultimately obtaining $15,955, more or less. This includes $300 in twenty-dollar bills which is bait money.

Wendy Tuttle advises she was a teller at Summit State Bank on June 22, 1974 and her teller cage was among those held up by above subject. Subject handed Tuttle a brown paper bag which she filled with money, including heavy coin. The coin fell through the sack to the floor and subject dropped the sack, which has been recovered by Special Agents of the Federal Bureau of Investigation.

Subject was given a cloth money bag by Tuttle and money from Tuttle's teller cage and other teller cages was put into it.

Subject then discharged his firearm at a customer and proceeded to reload his handgun. In the process of reloading, he dropped a cartridge which has been recovered by Special Agents of the FBI. The cartridge is .357 magnum ammunition.

Subject effected his escape by taking Dean Thom hostage and escaping in Thom's car, which was abandoned two blocks from the bank.

Special Agents at the FBI laboratory advise that the fingerprints of Henry Albert Steves were found on the brown paper bag dropped by subject in the bank.

Tuttle and Price advise subject is from 5'8" to 5'10" tall, wears no glasses, about 160-180 pounds, about 33-38 years of age.

Subject removed his mask outside the bank and Leonard Emerson Brooks advises he observed subject's face. Brooks observed the subject was a white male. This observation was made by Brooks in the parking lot adjacent to the bank.

Your affiant has observed Henry Albert Steeves and notices he is a white male, 5'8" tall, 160 pounds, and has determined his true age to be 34. Steeves does not wear glasses.

Herb Eckenroth knows Steeves and has observed that Steeves has an affinity for wearing black.

Your affiant has determined from personal observation that Steeves resides at 586 Fourth Street Northeast, Fridley, Minnesota.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

-against- AFFIDAVIT

KENNETH RAYMOND CHIN and
ELIZABETH JANE YOUNG, 75 CR 851

Defendants.

- - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

NEAL FINDLEY, being duly sworn, deposes and says:

1. The affidavit submitted by William Liebovitz, the attorney for the defendant Kenneth Raymond Chin, alleges that I had "ample opportunity", prior to the issuance of a warrant to search the defendant's premises, "to learn and know in the ordinary and prudent exercise of [any] duty" that the defendant Elizabeth Jane Young did not pose any threat to the safety of the Emperor of Japan during his visit to New York City which commenced on October 4, 1975 (Aff. p. 2).

2. Specifically, Mr. Liebovitz alleges that we failed improperly to conduct "any surveillance of the defendants personally to determine the truth or falsity of the claim made in [my] affidavit that the defendants were connected with a threat to the Emperor's or others' personal safety." What he claims should have been undertaken was a twenty four hour surveillance, and that "the slightest effort by the defendants to go anywhere or do anything that appeared, however remotely, to be preparatory to making any physical contact with or otherwise causing any threat to the Japanese Emperor would instantaneously have been followed inch by inch

through appropriate surveillance" (Aff. pp. 2-3).

3. Mr. Liebovitz concludes this aspect of his attack on my credibility by alleging that (Aff. p. 4):

> "what would have been revealed to Agent Findley by any good faith, direct surveillance of the defendants is exemplified by the provable events of October 4, 1975, on the morning of their arrest. While their residence was being searched Ms. Young was attending a weekly four-hour class in plumbing at Local No. 1 of the Plumber's Union in Brooklyn, New York where she has been an indentured trainee of the Union. Such facts were and are readily verifiable by the government. At the same time defendant Chin was doing the weekly household shopping and was arrested upon returning to the residence carrying large bundles of groceries. Such were the defendants' activities on the first day of the Japanese Emperor's arrival in New York City. Obviously, they were not engaged in threatening the safety of His Excellency, as Agent Findley had alleged without benefit of any previous direct surveillance of these defendants. His failure to conduct such surveillance before swearing to an opinion" of the serious threat allegedly posed by them was a reckless disregard of the truth."

4. The allegations are based upon an obvious lack of knowledge of the time pressure under which we were operating and the practical problems posed by direct surveillance. The information which formed the basis of my supplemental affidavit was relayed by the Federal Bureau of Investigation to the Secret Service sometime on October 1, 1975, and was received by teletype by the Secret Service in New York at 11:15 A.M. on October 2, 1975. The Emperor of Japan was scheduled to arrive in New York City on October 4, 1975 and to attend a football game at Shea Stadium on October 5, 1975. Accordingly, if the warrant was to be executed during daylight hours, prior to the arrival of the Emperor, it had to be obtained sometime on October 3, 1975.

5. We therefore had no more than twenty four hours to act. This provided us with little enough time to check out certain basic facts, much less conduct an extensive surveillance. And, more significantly, it has been our experience that physical surveillance is notoriously unreliable, particularly in a large metropolitan area, where the risk of losing the suspect on a crowded street, highway, or subway is not insignificant. Of course, needless to say, these defendants were not the only persons who the Secret Service was concerned about with regard to the safety of the Emperor. At least two dozen other persons were potential threats who had to be investigated.

6. Moreover, the fact that "the provable events" on October 4, 1975, the morning of their arrest would have demonstrated that the defendants were not "engaged in threatening the safety of His Excellency" hardly proves anything. On November 21, 1963, for example, "the provable events", which would have been disclosed by a physical surveillance of Lee Harvey Oswald, were that he spent the day at the home of his wife and children, that he played on the lawn with his daughter Junie, that he ate dinner with his family at 6:30 P.M., and went to bed at 11:30 P.M. (Manchester, The Death of a President, 102-105 [1967]). Very little would have been disclosed to indicate that he would attempt to assassinate the President of the United States the next day. On the other hand, a search of those premises would have likely resulted in the seizure of the murder weapon.

7. Several other claims made by Mr. Liebovitz relating to the good faith of the Secret Service merit a response.

a. First, at no time to my knowledge did any member of the Secret Service alert the news media to the fact that a search would take place. Such action would have been contrary to our policy. And, indeed, such prior disclosure could have been embarrassing had the search proved fruitless. We did, however, alert the New York City Police Department to the fact that the search would be made. This is done so that they can properly respond to calls from neighbors regarding what may be a forcible entry into an apartment. It is conceivable that the leak emanated from that source.

b. Second, this case was transferred to the Alcohol, Tobacco & Firearms Bureau of the Treasury Department because the evidence disclosed by the search established a clear violation of the laws regulating firearms (a matter within its jurisdiction). Although a veritable arsenal of weapons was uncovered, including the weapon which was the subject of the search warrant,* there was no direct evidence to charge the defendants with a conspiracy to assassinate the Emperor of Japan. While it is true that the defendants were released from custody before the Emperor's departure from the United States, they were not released until after his departure from New York and, of course, after the seizure of weapons. By this time there was reason to believe that whatever

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* Annexed hereto as Exhibit A are photographs of the weapons and related items seized.

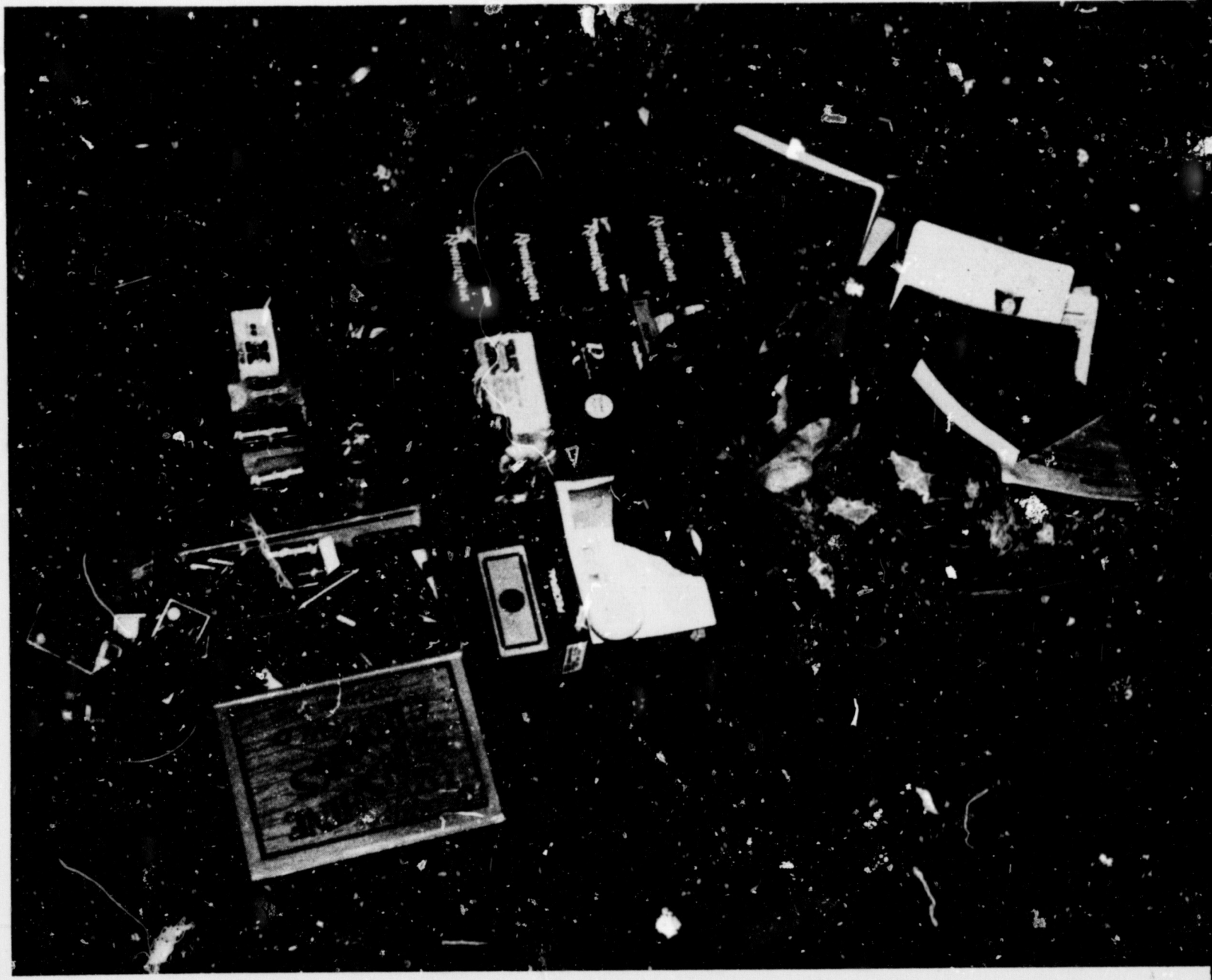
threat they may have posed was significantly diminished.

c. Third, the defendants attack the truthfulness of Paragraph "1" of my supplemental affidavit which alleges: "Investigation by Special Agents of the United States Secret Service which revealed that during the year 1973 Elizabeth Jane Young resided at 4303 Arlington Avenue, Los Angeles, California with one Joanne Miyamoto."

The defendants claim that Joanne Miyamoto did not reside at 4303 Arlington Avenue, Los Angeles, California, but at "a separate residence bearing no resemblance to the address of Ms. Young." This allegation is only partially accurate. First, let me say, we have been advised by the Federal Bureau of Investigation that the correct address on Arlington Avenue in which the defendant Young resided was 4304 rather than 4303 Arlington Avenue and that the discrepancy was due to a typographical error in the transmission of the information. Second, it is true that Joanne Miyamoto did not reside at that address; however, she did reside in an adjoining two story house at 2208 - 43rd Street immediately around the corner from the one-story residence of Ms. Young at 4304 Arlington Avenue. This discrepancy in the affidavit is, I believe, attributable to the haste with which the information was gathered and the supplemental affidavit was prepared.

Sworn to before me this
28th day of January, 1976.

Notary Public, State of New York
Qualified in Kings County
Commission Expires March 30, 1977



AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

CAROLYN N. JOHNSON, being duly sworn, says that on the 26th day of January 26, 1977, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, Two copies of the Brief for appellee and 2 cys of the Supplemental Appendix for Appellee of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Eleanor Jackson Piel, Esq.
36 West 44th Street
New York, New York
10036

Ira D. London, Esq.
547 86th Street
Brooklyn, New York 11201

Sworn to before me this
26th day of January, 1977

Sylvia E. Morris

SYLVIA E. MORRIS
Notary Public, State of New York
No. 24-4503661
Qualified in Kings County
Commission Expires March 30, 1977

Carolyn N. Johnson

CAROLYN N. JOHNSON